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May 2, 2000

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37238

Re: Application of Memphis Networx for Certificate of Convenience
and Necessity, Docket No. 99-00909

Dear Mr. Waddell:

On the morning of Tuesday May 2, 2000, the Consumer Advocate Division received a copy of the Amended Application of Memphis Networx LLC filed with the TRA as part of Docket No. 99-00909. The Consumer Advocate Division is not a party to this proceeding but upon reviewing the Amended Application the Consumer Advocate Division has concerns about the Amended Application for a Certificate of Convenience and Necessity (CCN). For the reasons set forth below, the Consumer Advocate Division seeks the publication of the Amended Application so that the public will have received proper notice of the Amended Application and the Consumer Advocate Division will have had sufficient time to review this matter in order to determine whether it should recommend intervention to the Attorney General.

First, the Amended Application raises several new issues that were not present in the original application. The Consumer Advocate made its decision not to intervene based on its understanding of the original application. The main issue appeared to be the implementation of allocation safeguards. It is possible that other members of the public would be interested in reviewing the new matters in the Amended Application and either participate in the hearing or simply notify the TRA of their views. In particular, the Consumer Advocate Division would draw the attention of TRA to Paragraphs 5 & 6 of the Amended Application which may have anti-competitive and anti-trust implications. They limit the geographic area, time period and customers for which the applicant can compete. The dominant carrier was likely consulted and would benefit even if it has not signed.

The Consumer Advocate Division would also point out that Section 253 of the Telecommunications Act of 1996 provides that:

No State or local statute or regulation, or other State or local legal requirement, may

prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

A copy of Section 253 is attached hereto. As written, the Amended Application appears to be asking the TRA to approve a requirement limiting competition and the provision of service.

Furthermore, given the agreement there is a serious question about how effectively the record will be developed on the critical issue of cross-subsidization and the settling interveners are no longer positioning or aligning themselves in a way which also protects the interests of consumers. Accordingly, at the very least, time is needed for the non-settling parties, the TRA staff, and the TRA itself to consider the full implications of the general agreement.

The Consumer Advocate appreciates the fact that this hearing has been scheduled for some time, but respectfully submits that the recent filing of the Amended Application has so changed the nature of this case that a continuance is required.

Sincerely,


Vance L. Broemel

<< 47 USCA § 253 >>

"SEC. 253. REMOVAL OF BARRIERS TO ENTRY.

"(a) IN GENERAL.--No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

"(b) STATE REGULATORY AUTHORITY.--Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.